

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

EPLET, LLC and RACER
PROPERTIES LLC,

Case No. 2:17-cv-11462

Plaintiffs,

HONORABLE STEPHEN J. MURPHY, III

v.

DTE PONTIAC NORTH, LLC and
DTE ENERGY SERVICES, INC.,

Defendant.

_____ /

**STIPULATED ORDER FOR: (I) ENTRY OF
SEPARATE JUDGMENT IN FAVOR OF DEFENDANT
DTE ENERGY SERVICES, INC.; AND (II) STAYING ACTION**

WHEREAS, on May 6, 2017, plaintiffs RACER Properties LLC, a Delaware limited liability company, and EPLET, LLC (collectively, the "Plaintiffs") commenced the above-captioned action (this "Action") against DTE Pontiac North, LLC ("DTEPN") and DTE Energy Services, Inc. ("DTE Energy") by the filing of their complaint (the "Complaint") [ECF 1] in this Action¹;

WHEREAS, on July 28, 2017, the Defendants filed a motion to dismiss the Complaint [ECF 11], which the Court granted in part and denied in part by order dated March 23, 2018 [ECF 27] (the "First Dismissal Order");

WHEREAS, on April 13, 2018, the Plaintiffs filed a motion for reconsideration [ECF 29] of the First Dismissal Order, which the Court denied by

¹ DTEPN and DTE Energy are collectively referred to as the "Defendants."

order dated February 26, 2019 [ECF 41];

WHEREAS, on May 4, 2018, the Plaintiffs filed a motion for leave to file an amended complaint [ECF 34], which the Court granted in part and denied in part by order dated February 26, 2019 [ECF 41];

WHEREAS, on March 26, 2019, the Plaintiffs filed an amended complaint (the "Amended Complaint") [ECF 42];

WHEREAS, on April 8, 2019, the Defendants filed a motion to dismiss the Amended Complaint (the "Motion to Dismiss Amended Complaint") [ECF 47] and motion to strike certain allegations of the Amended Complaint (the "Motion to Strike") [ECF 46];

WHEREAS, the Court granted in part and denied in part the Motion To Dismiss Amended Complaint and Motion to Strike by order dated February 19, 2020 [ECF 61] (the "Second Dismissal Order," together with the First Dismissal Order, the "Dismissal Orders");

WHEREAS, the Court, by the Dismissal Orders, dismissed all claims against DTE Energy;

WHEREAS, on March 4, 2020, the Plaintiffs filed an amended complaint [ECF 62] pursuant to the Second Dismissal Order;

WHEREAS, following entry of the Second Dismissal Order, the Plaintiffs and Defendants have been engaged in discussions as to the most efficient manner of litigating this Action, with a focus on reducing costs and conserving judicial resources;

WHEREAS, the parties have stipulated and agreed, subject to this Court's approval, to: (i) entry of a separate final judgment in favor of DTE Energy (the "DTE Energy Judgment") in this Action pursuant Federal Rule of Civil Procedure 54(b); and (ii) stay this Action against DTEPN pending a ruling of the United States Court of Appeals for the Sixth Circuit (the "Sixth Circuit") on the Plaintiffs' appeal of the DTE Energy Judgment;

WHEREAS, the parties have further stipulated and agreed, subject to this Court's approval, that if the Sixth Circuit affirms the dismissal of all claims in this Action against DTE Energy, then Plaintiffs shall cause the voluntary dismissal of this action as to DTEPN, with prejudice;

WHEREAS, this Stipulation will result in the most efficient administration of this Action, by reducing the parties' legal fees and expenses and conserving judicial resources, because: (i) it will result in the dismissal of all claims in this Action, including those claims against DTEPN, with prejudice, if the Sixth Circuit affirms the Court's prior dismissal of all claims against DTE Energy; (ii) if the Sixth Circuit reverses the dismissal of any of the claims against DTE Energy, then there will only be a single trial of all claims against DTEPN and DTE Energy in this Action; and (iii) the stay of this action will terminate automatically in the event that the Sixth Circuit reverses the dismissal of any of the claims against DTE Energy;

WHEREAS, there is no just reason for the delay in entry of a separate judgment dismissing all claims in this Action against DTE Energy so as to allow

appellate review;

NOW, THEREFORE:

IT IS HEREBY ORDERED as follows:

1. Concurrently herewith, the Court is entering a separate judgment in favor of DTE Energy dismissing all claims against it in the form annexed hereto as Exhibit A (the "DTE Energy Judgment"); and

2. Based upon the consent of the Plaintiffs and the Defendants: (i) this Action is **STAYED**, pending a decision from the Sixth Circuit on an appeal of the DTE Energy Judgment to be filed by the Plaintiffs; (ii) if the Sixth Circuit affirms this Court's dismissal of all of the Plaintiffs' claims against DTE Energy, Plaintiffs shall cause this Action against DTEPN to be voluntarily dismissed, with prejudice (and for the avoidance of doubt Plaintiffs shall be deemed to have waived all rights to appeal or seek reconsideration as to dismissal of any claims asserted against DTEPN in this Action); and (iii) if the Sixth Circuit reverses the dismissal of any of the claims against DTE Energy, the stay of this Action will terminate automatically.

SO ORDERED,

s/ Stephen J. Murphy, III
STEPHEN J. MURPHY, III
United States District Judge

Dated: April 14, 2020

STIPULATED AND AGREED on April 13, 2020 by:

Plaintiffs RACER Properties LLC, a Delaware limited liability company, and EPLET, LLC, a Delaware limited liability company, as environmental response trust administrative trustee for the Revitalizing Auto Communities Environmental Response Trust

/s/ Frances Belzer Wilson (with consent)

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Defendants DTE Pontiac North, LLC, a Michigan limited liability company, and DTE Energy Services, Inc. a Michigan corporation

/s/ Joel C. Bryant

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Exhibit A

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF
MICHIGAN (SOUTHERN DIVISION)**

RACER PROPERTIES LLC,
and EPLET, LLC,

Plaintiffs,

v.

Case No. 2:17-cv-11462-SJM-RSW
Hon. Stephen J. Murphy, III
Hon. Magistrate R. Steven Whalen

DTE PONTIAC NORTH, LLC,
and DTE ENERGY SERVICES,
INC.,

Defendants.

**[PROPOSED] FINAL JUDGMENT OF ALL CLAIMS AGAINST
DEFENDANT DTE ENERGY SERVICES, INC.**

The Court having dismissed all claims of Plaintiff RACER Properties LLC, a Delaware limited liability company, and of Plaintiff EPLET, LLC (collectively, the "Plaintiffs") in this matter against Defendant DTE Energy Services, Inc. ("DTE Energy") by opinions and orders dated March 23, 2018 [ECF27] and dated February 19, 2020 [ECF61]; and the Court being otherwise fully informed:

NOW THEREFORE, IT IS HEREBY ORDERED that pursuant to opinions and orders of this Court dated March 23, 2018 [ECF27] and dated February 19, 2020 [ECF61], Plaintiffs' claims in this Action against Defendant DTE Energy were dismissed;

IT IS FURTHER ORDERED that there is no just reason for delay in entering a final judgment of Plaintiffs' claims against Defendant DTE Energy and,

therefore, pursuant to Fed. R. Civ. P. 54(b), this order is a final judgment as to Defendant DTE Energy.

IT IS SO ORDERED.

Stephen J. Murphy III,
United States District Judge

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